

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 August Term, 2004

5 (Argued January 28, 2005

Decided March 24, 2005)

6 Docket No. 04-1386-cv
7

8 Peter McCauley,
9 Plaintiff-Appellant,

10 v.

11 Trans Union, L.L.C.,
12 Defendant-Appellee.

13 Before OAKES, RAGGI and WESLEY, Circuit Judges.

14 Plaintiff rejected defendant's Rule 68 offer of judgment,
15 objecting to provisions that made it confidential and without
16 precedential value. The United State District Court for the
17 Southern District of New York, Victor Marrero, Judge, dismissed
18 the case as moot and entered judgment in favor of the defendant,
19 finding that the offer encompassed all the relief to which
20 plaintiff was entitled.

21 Vacated and remanded.
22

23 Peter McCauley, New York, NY,
24 Plaintiff-Appellant Pro Se.

1 Mark E. Kogan, Philadelphia, PA
2 (Timothy P. Creech, Satzberg,
3 Trichon, Kogan & Wertheimer, P.C.,
4 of counsel), for Defendant-
5 Appellee.

6
7 OAKES, Senior Circuit Judge:

8 This pro se appeal raises the question whether a plaintiff's
9 rejection of an offer of judgment under Fed. R. Civ. P. 68 moots
10 the case so that entry of judgment in favor of the defendant is
11 appropriate. The United State District Court for the Southern
12 District of New York, Victor Marrero, Judge, dismissed this case
13 as moot and entered judgment in favor of the defendant when the
14 defendant's offer of judgment was refused. Because we find that
15 the plaintiff's refusal did not, in and of itself, moot the case,
16 we vacate the judgment and remand for entry of a default judgment
17 in favor of the plaintiff.

18 The facts behind this appeal can be quickly summarized. In
19 May 2002, Peter McCauley filed a complaint against Trans Union, a
20 consumer reporting agency, alleging that Trans Union had
21 negligently indicated on McCauley's credit report that he had two
22 outstanding tax liens, thus temporarily preventing McCauley from
23 securing a student loan with Sallie Mae Servicing Corporation

1 ("Sallie Mae"). McCauley demanded damages in the amount of \$240,
2 which was the fee he incurred when, after he was refused a loan
3 by Sallie Mae, he charged over \$8,000 in tuition to his credit
4 card.

5 In June 2002, Trans Union filed an answer to McCauley's
6 complaint, which denied all allegations and requested that the
7 court dismiss McCauley's complaint with prejudice. In October
8 2002, Trans Union made an offer of judgment pursuant to Fed. R.
9 Civ. P. 68¹ for \$240, plus costs to be determined by the court.
10 The offer of judgment specified that it not be construed as an
11 admission of liability and that it remain confidential and filed
12 under seal.

13 In September 2003, Trans Union moved for summary judgment,
14 arguing that it had offered McCauley the entire amount of
15 compensatory damages he had sought, eliminating any "case or
16 controversy" with respect to McCauley's claims. The district
17 court granted the motion in part, and denied in part, finding
18 that because there remained a possibility that McCauley could
19 recover punitive damages at the time of the settlement offer,

1 ¹Fed. R. Civ. P. 68 (2004) states that "a party defending
2 against a claim may serve upon the adverse party an offer to
3 allow judgment to be taken against the defending party for the
4 money . . . , with costs then accrued."

1 Trans Union's offer did not encompass everything McCauley could
2 possibly have been entitled to recover from his claims. The
3 court acknowledged, however, that punitive damages were no longer
4 available to McCauley and concluded that "the only possible
5 damages McCauley may still recover . . . would be \$240 along with
6 the costs of the action. Were Trans Union now to make an
7 identical Rule 68 offer of judgment that it made prior to filing
8 this motion . . . the Court would be compelled to dismiss the
9 action if McCauley were to reject the offer."

10 Thereafter, Trans Union renewed its offer of \$240 plus court
11 costs to McCauley. Because McCauley refused to accept the offer,
12 the court dismissed the case in December 2003, holding that the
13 offer constituted everything McCauley would potentially recover
14 through successful litigation. Judgment was entered in favor of
15 Trans Union.

16 On appeal, McCauley argues that he is seeking not just his
17 actual damages of \$240 but, more importantly, the precedential
18 value of a judgment against Trans Union, which is frustrated by
19 the language in Trans Union's settlement offer requiring that the
20 settlement be confidential and filed under seal. McCauley
21 contends that he has a legal and cognizable interest in obtaining
22 a judgment that is not confidential and sealed, and thus can be

1 used as precedent in future matters. He also asserts that, even
2 if the district court properly dismissed his claim, it erred in
3 failing to enter a judgment of \$240 plus costs against Trans
4 Union.

5 We have held that the federal courts lack jurisdiction in a
6 case because of mootness "when the parties lack a legally
7 cognizable interest in the outcome." Fox v. Bd. of Trustees of
8 State Univ. of New York, 42 F.3d 135, 140 (2d Cir. 1994)
9 (internal quotation omitted). It is clear that Trans Union's
10 unwillingness to admit liability is insufficient, standing alone,
11 to make this case a live controversy. See Abrams v. Interco,
12 Inc., 719 F.2d 23, 33 n.9 (2d Cir. 1983) (plaintiff is not
13 entitled to "pursue litigation in which he no longer has an
14 interest merely because this could benefit others"). As
15 explained by a sister circuit in discussing disclaimers of
16 liability in Rule 68 settlement offers, "a party [cannot] force
17 his opponent to confess to having violated the law, as it is
18 always open to a defendant to default and suffer judgment to be
19 entered against him without his admitting anything." Chathas v.
20 Local 134 IBEW, 233 F.3d 508, 512 (7th Cir. 2000). The Chathas
21 court went on to say, "if the defendant has thus thrown in the
22 towel there is nothing left for the district court to do except

1 enter judgment. The absence of a controversy in the
2 constitutional sense precludes the court from issuing an opinion
3 on whether the defendant actually violated the law." Id.

4 Although McCauley is not entitled to keep litigating his
5 claim simply because Trans Union has not admitted liability,
6 Chathas's language suggests that the district court's entry of
7 judgment for Trans Union did not moot this case. In the absence
8 of an obligation to pay McCauley the \$240 in claimed damages, the
9 controversy between McCauley and Trans Union is still alive.
10 When Trans Union acknowledged that it owes McCauley \$240, but
11 offered the money with the requirement that the settlement be
12 confidential, Trans Union made a conditional offer that McCauley
13 was not obliged to take. Because judgment was then entered in
14 Trans Union's favor, Trans Union was relieved of the obligation
15 to pay the \$240 it admittedly owes, and McCauley, by his refusal
16 of a conditional settlement offer, wound up with nothing. We
17 therefore cannot conclude that the rejected settlement offer, by
18 itself, moots the case so as to warrant entry of judgment in
19 favor of Trans Union.

20 Chathas points the way to a better resolution: entry of a
21 default judgment against Trans Union for \$240 plus reasonable
22 costs. Such a judgment would remove any live controversy from

1 this case and render it moot. Moreover, a default judgment would
2 serve Trans Union's desire to end the case, would award McCauley
3 his damages and, like the Rule 68 settlement offer, would have no
4 preclusive effect in other litigation. Unlike the settlement
5 offer, however, the default judgment would be a matter of public
6 record, satisfying McCauley's desire that the case's disposition
7 not be confidential. Although Trans Union sought to avoid this
8 last result, a party engaged in litigation is not entitled to
9 insist on confidentiality. See Gambale v. Deutsche Bank AG, 377
10 F.3d 133, 140 (2d Cir. 2004) ("The public's stake in the
11 propriety and particulars of the court's adjudication does not
12 evaporate upon the parties' subsequent decision to settle.").

13 At oral argument, both parties agreed that entry of a
14 default judgment would satisfactorily resolve this case. We have
15 considered McCauley's arguments with respect to attorney's fees
16 and find them to be without merit. We therefore vacate the
17 judgment entered in favor of Trans Union and remand the case to
18 the district court for the limited purpose of entering a default
19 judgment in favor of McCauley for \$240 plus such costs as the
20 district court deems reasonable.